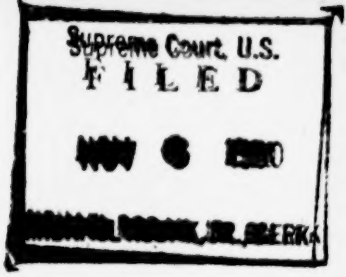
No 80-791



IN THE SUPREME COURT

OF THE UNITED STATES

October Term 1980

GEOFFREY ROY AKERS, PETITIONER

V.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT

PETITIONER'S REBUTTAL

Geoffrey Akers
25 Lincoln Ave
Norwich, CT 06360

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IN THE SUPREME COURT OF THE

UNITED STATES

October Term,1980

No 80-391

DR. GEOFFREY ROY AKERS,

PETITIONER

V.

COMMISSIONER OF INTERNAL
REVENUE,RESPONDENT

PETITIONER'S REBUTTAL

The petitioner, Geoffrey Roy Akers,in the above entitled case, under Rule 22 of this Court, submits this rebuttal to each and every point raised in the Respondent's Memorandum in Opposition.

Preliminarily, the Respondent did not reply within the 30 days allowed by Rule 22(1). The case was docketed Sept 12,1980; Respondent replied October 21,1980, beyond 30 days allowing for receipt time. As a first basis, the petitioner requests the Court consider Respondent's Motion filed untimely as it does not conform to Rule 22(1).

The facts of the matter as well as the Brief of the Respondent in essence actually support well the position of the petitioner not that of the Respondent at all. Examination of the Memorandum in Opposition and the facts reveals the following flaws:

Page 2 of Rpdt Mem: Under Section 1.6001 for Allowance of Charitable Contributions, a listing of specfic facts,churches,dates, and amounts is adequate record to establish the deduction. This is a printed regulation. The IRS has misstated the Section 1.170 reqr. becasue its full context is given by the Tax

Court opinion attached to Petitioner's Petition. The regulation ends, "by a state ment from DONEE INSTITUTIONS. This in fact, was done, as the Asst. Treasurer of the Mother Church(Boston,Mass) testified that about 70,000 to 90,000 was received by that church in cash during the year in question; hence the 6900 claimed by the petitioner represented only 8% on average of the cash contributions of the church. Here, independent proof,required by the regulation in even its most stringent form was provided as all numbers balanced. This is not true that there was no proof because the independent testimony of the Treasurer and the diary in accordance with Section 1.6001 with material facts is all that the code essentially requires.

The regulation applicable to charitable deductions does NOT preclude such an approximation; it says nothing at all to that effect

because it deals only with the records and their nature and needed information. In fact, in the cases cited in the petition, the Tax Court has allowed on numerous occassions an allowance for contributions made by an approximate method realizing full well, that to not allow the deduction creates a mathematical imbalance in the return, the same that occurs here as we shall see if one takes the position of the IRS. Also, if an approximation under the Cohan Rule is allowable in business and not in charity, this is discrimination against religion, and contradicts the entire Federal doctrine in the first instance, of separation of church and state.

Page 3 is mathematically fallacious. If it is not true that petitioner spent more than $78 for church than one ends up with a $9000 discrepancy on the return! That is, there is $9000 completely unaccounted

for, hence the mathematics and "numbers do not lie" doctrine show that the petitioner expended funds far in excess of $78 that would establish a basis for the Cohan estimation in the first instance and a analogous estimate to charity as in business in the Second. Indeed, section 1.274(1-5) allows diaries as sufficient to satisfy the substantiation requirement in the IR Code, hence the IRS position here is internally contradictory.

The IRS does not state the facts. The PRINTED regulation is completely in accord with the First Amendment, as it does not coerce one to donate in a certain manner(eg receipts violating the Sermon on the Mount that alms be in secret, and donate by mail-in outside of church) it is the "LOCAL-POLICY" of demanding receipts when the printed regulation does not prescribe them that is at issue here. In other words, the IRS is not even following its own printed regulations, and in so doing it violates

the First Amendment, because it follows a course that is prescribed by NO written regulation at all in the code. That is, what is being argued here is, not the printed code adopted by congressional action, nor the true separation of church and state which are both correct, but the bureaucratic misstatement of the regulations about the facts and areas of deductions, that permits a local IRS office to take the law into its own hands and make up some interpretation that isn't even in the printed code! Such nonsense is an insult to intelligent people.

Also, testimonial evidence was presented by the petitioner at trial and the diary was presented under the "best evidence rule", as it is factual(stated by the Asst Treasurer at Tax Court) that the church does NOT maintain a system of records or receipts for cash contributions made. The principle of giving in

secret in the manner prescribed by Matthew 6: 1-4 in the Bible is another example of symbolic expression and held inviolate by this Court under the right to believe and practice so long as no one is hurt. Certainly noone is hurt during a church service!

Also, the act of IRS meddling inside the worship ceremeny is another step in the invasion of privacy and the loss of individual rights in the society. The right to worship and manifest one's gratitude in the manner he sees fit is essential to a free society, as who is a bureaucracy to judge one's soul!???

This case requires Supreme Court consideration because in the first instance, the decision of a lower court upholding donations outside of service by "mail-ins" contradicts the church policy itself, invades on religious grounds, makes the state dictate religious policy to follow an interpretation of IRS that isn't even in the printed law, and contradicts the Supreme Court's

prior decisions on the separation of church and state. In the second instance, it needs to be reviewed, because the Court of Appeals has decided a question in conflict with other prior decisions of the court, namely the Cohan rule, where as we have seen, the Cohan Rule in one form or another must apply or else one is led to mathematical inconsistencies on the return($9000 unaccounted for) or else discrimination against religion by the IRS's own Memorandum in Opposition filed in this case.

As another example to show this Court how much a hodgepodge this case has become, the IRS on September 4,1980 irrationally filed a Federal Tax Lien against Petitioner's wife's house, in which petitioner has no legal interest at all. This constitutes a wrongful lien(Section 7624 Suit aginst IRS for injunction to block lien pending review by SCt) an usurps this Court's

right of review under Section 7481,6213 and the fact that the Tax Court decision has not yet become final pending review by this Court. Hence, IRS has resorted to intimidation procedures, illegal acts of making up courses of actions that are not in the printed regulations and has suffered from intercommunication problems within its own structure.

This case cuts across several boundaries: In one way, the freedom of the individual is at stake here, as this act of the IRS represents further erosion of the right to privacy and the free exercise of religion. Carried to its logical extreme if one were to adopt the "mail-in" concept of donations, then no allowance would be made for internal church donations, and would defeat in some measure the attendance at church. Common sense must prevail; this is ridiculous, and the church/state must exist in coharmony as the printed IR Code and the decisions of this court have been established. It is best to leave

the printed law and the church state alone, and this is the position of the petitioner, namely to not allow some bureaucratic policy to interfere with the operation of law and church; the First Amendment, although broad, is also in its own niche, and in the area of church and state, the First Amendment is relevant.

It is therefore respectfully requested that the petiton for certiorari be granted and the Court decide at that point on the full issues of the case rather than close off these possibilities at this time.

October 31, 1980

Dr. Geoffrey Akers,
Petitioner